



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 7380-99
14 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your application on 10 February 2000, as directed by the United States District Court for the Southern District of Iowa, R. E. Longstaff, Judge. The Court directed the Board to "...specifically address the possibilities of granting the plaintiff a medical discharge and correcting the plaintiff's medical record." The Board presumed that the Court wanted it to determine whether your service and medical record should be corrected to show that you were discharged by reason of physical disability pursuant to 10 U.S. Code 1203, for major depression and/or dysthymia, vice under other than honorable conditions by reason of misconduct.

Your allegations of error and injustice were as follows:

- "1. I believe that there were extenuating circumstances behind my unauthorized [sic] absence and subsequent discharge, including the fact that I had a psychological disorder that was far worse [sic] than was appreciated by the Navy or myself at the time.
2. I received no proper medical or [sic] psychiatric exam prior to discharge.
3. There were inconsistencies in my hearing before the discharge authority."

Your attorney stated her belief that the documents she submitted in support of your application "...point toward the inevitable conclusion that [REDACTED] was seriously mentally ill while in the Navy and specifically at the time of his unauthorized absence and discharge. His condition was misdiagnosed by service practitioners. All information provided to you today must lead the Board to conclude that [REDACTED] would more properly have received a medical discharge or honorable discharge" and that your discharge "...was not voluntary, or

the result of misconduct on his part, but rather was due to his extreme depression and dysthymia at the time." Neither you nor your attorney submitted a brief in support of the application, or made an effort to explain the basis for your belief that the enclosures to the application demonstrate that you were entitled to the requested relief.

The Board noted that a presumption of regularity attaches to all official records; consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice. It is not the function of the Board to prove that error or injustice does not exist in your record.

Your contentions, as well as the Court's opinion, were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by two designees of the Specialty Advisor for Psychiatry, dated 24 April 1996, a copy of which is attached.

The advisory opinion was requested from the Specialty Advisor for Psychiatry, who opted to refer the matter to other psychiatrists rather than rendering it himself. The opinion was written by a psychiatrist who had recently completed training, and it was reviewed by a more experienced psychiatrist. The fact that an advisory opinion was solicited from and endorsed by the Specialty Advisor for Psychiatry does not mean that the authors of the opinion are more competent than the multiple Navy mental health practitioners and general physicians who evaluated your mental health status during your Navy service, or that the advisory opinion is entitled to greater weight than the findings of the other practitioners. As indicated by its title, the opinion is advisory in nature, and not binding on the Board. The Board noted that if panels of the Board were to defer to the uniformed Navy officials who provide advisory opinions, without independently reviewing the evidence and making its own conclusions, the very reason for the Board's existence would be undermined. This is especially in true in your case, because the authors of the advisory opinion did not provide a cogent rationale for the recommendation that your request for correction of records be granted. The Board noted that, in many ways, it functions as jury, and that as in most cases in which there is conflicting medical evidence, the jury, or board or other trier of fact, as the case may be, is required to make judgments concerning disputed, often highly complex medical issues, notwithstanding the lack of specialized medical knowledge or training decision makers.

After careful and conscientious consideration of the entire record, and notwithstanding the recommendation contained in the aforementioned advisory opinion, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this regard, it stands-by and adopts the finding of the panel of the Board which considered your application on 9 May 1996.

As a matter of clarification, the Board noted that you were not punished for unauthorized absence, as is indicated in your application and allied papers; rather, you were punished and ultimately discharged for the crime of desertion. The Board noted that decision of your former commanding officer to dispose of that crime through nonjudicial punishment and administrative discharge proceedings, rather than by referring the charge for trial by court-martial, represents a significant grant of clemency, as you could have received a dishonorable discharge, total forfeiture of pay and allowances, and confinement at hard labor for up to two years had you been convicted by court-martial of that crime

The Board concluded that although your behavior and performance of duty may have been affected adversely by a mental disorder, there is no reliable evidence concerning the true nature, extent or severity of the disorder at the time you committed the offense resulting in your discharge. In this regard, it concluded that you are not a reliable historian concerning your mental health history or the symptoms of a mental disorder you allegedly experienced when you deserted. It also concluded that your explanation of why you deserted is not worthy of belief. The Board noted that most of the evidence submitted in support of your application was based on your own self-serving, unreliable statements to various mental health practitioners, and as such, it is of no probative value. It noted when a mental health practitioner makes a diagnosis of non-psychotic disorder, as in your case, the diagnosis is based almost exclusively on information related to the practitioner by the patient, which the practitioner accepts as true. Although a practitioner might note that a patient appears to be tearful, sad or "depressed", or that he or she demonstrates a disturbed affect, a diagnosis of dysthymia or non-psychotic major depression cannot be established unless the patient relates a history which corresponds to the diagnostic criteria applicable to the chosen diagnosis. For the most part, these are symptoms which cannot be observed by the practitioner in a brief interview with the patient, and even in those cases where the symptoms are observed, they may simulated, especially in cases such as yours, where secondary gain is sought. The Diagnostic and Statistical Manual of Mental Disorder, Fourth Edition, lists five diagnostic criteria for Major Depression, with multiple sub-criteria. Among the sub-criteria which are not susceptible to objective verification, unless the patient is under observation for a substantial period of time, and possibly only when he is hospitalized, and then only if the patient is not malingering, are a depressed mood most of the day most every day; markedly diminished interest in most activities; significant weight loss or weight gain; insomnia or hypersomnia nearly every day; fatigue or loss of energy nearly every day; feelings of worthlessness or excessive or inappropriate guilt; diminished ability to think or concentrate, or indecisiveness nearly every day; and recurrent thoughts of death. A diagnosis of dysthymia requires, among other things, a finding of depressive symptoms such as those discussed above for a minimum period of two years, without a break in the symptomatology of more than two months at a time during that period. The Board concluded that your expert witnesses accepted your reports concerning your alleged symptoms as true, but did not actually observe those symptoms. It appeared to the Board that your witnesses were not aware of information in your Navy service and health record indicating that you are not a reliable historian, or if they were aware of that information, they ignored it. In any event, the Board concluded that the faith your experts had in your representations concerning your

mental health symptoms was misplaced.

The Board noted that you have repeatedly lied about your mental health history for a variety of reasons: to fraudulently procure your enlistment, obtain valuable training in the nuclear field, fraudulently obtain enlistment and reenlistment bonuses in the amounts of \$3750.00 and \$22,168.57, respectively, to shirk duty in hazardous and important naval operations, and in an apparent attempt to fraudulently procure your discharge. Some of the specifics of your fraudulent activities are discussed in the following paragraphs. The information was derived from your naval record as well as statements and records submitted in support of your application.

In this regard, the Board noted that you completed a fraudulent Standard Forms 93, Report of Medical History, on 12 March 1987, prior to enlisting in the Navy, and on 20 July 1987 and 24 October 1988, as well as in dental health questionnaires, and a Department of Defense Form 2246, Applicant Medical Prescreening Form, signed by you on 10 March 1987. In addition, you did not disclose your history of psychiatric hospitalization and psychological counseling as you were required to do, and you checked "NO" in items on some of the forms pertaining to a history of frequent trouble sleeping, being treated for a mental condition, having experienced nervousness, depression or excessive worry, or nervous trouble of any sort. In addition, you did not accurately disclose your mental health history to any of the Navy mental health practitioners who evaluated you during October 1990, January 1991, and May 1992.

Documents enclosed with your application tell a very different story. For example, notes attached to the statement of H.S. Weiss, MD, of 7 April 1992, indicate that you were hospitalized at a psychiatric facility in 1980 because of depression. On 7 April 1992, Dr. Weiss gave you a diagnosis of Major Depression, **Recurrent**, with history of previous similar depressive episodes. F.S. Gersh, Ph.D., indicates in his statement of 1 May 1995, that you had had problems with a depressed mood and other depressive symptoms since **puberty**, and that the symptoms had been present about 90% of the time. Reportedly, you did poorly at Luther College (which you attended during the August 1983-March 1985 period) because of depression, social withdrawal and excessive sleeping. Caren Cross, LCSW, indicates in her letter of 13 August 1995, that you reported a long history of depressive symptoms, pre-dating your enlistment in the Navy; that you had sought treatment for depression while in college; and that you had been sexually abused at age 15 by your step-mother. Lou Blankenburg indicates in his statement of 22 September 1995, that you reported that your first depressive episode occurred during your enlistment in the Navy and included (previously unreported) psychotic features, such as depersonalization, dissociation, paranoid ideation, and loss of touch with time and place for a period of time.

Had you disclosed your history of depressive symptoms, counseling, and hospitalization, when first required to do so, it is likely that you would have been disqualified from enlisting in the Navy, and certainly disqualified from training or duty in nuclear field. In this regard, it noted that Department of Defense Directive 6130.3, Physical Standards for Enlistment,

Appointment, and Induction, March 31, 1986, then if effect, provided that history of a mental disorder with gross impairment of reality testing, and a history of a mood disorder requiring maintenance treatment or hospitalization, were disqualifying for enlistment. Standards for personnel entering the nuclear field were more stringent because of the potential for misuse of devices and sources emitting ionizing radiation. Even minor psychological disorders such acute stress reaction, adjustment disorders and personality disorders may be disqualifying for such service

The Board noted that upon becoming qualified for nuclear duty and service on submarines, you never participated in an extended operational deployment. As you apparently did not want to deploy with your submarine in October 1990, during Operation Desert Shield, you absented yourself without authority. Upon your return, you claimed to be suffering from psychological complaints which you felt excused your actions. Although you reported suicidal ideation and feeling "increasingly depressed", your main complaints at that time involved the fast-paced routine of a submarine, and your feeling like a failure because of your desire to be perfect. You were hospitalized for evaluation and treatment, and received individual, group and milieu therapy. No evidence or neurovegetative signs consistent with major depression were noted while you were hospitalized. You were given diagnoses of Occupational Problem and Obsessive-compulsive traits, and discharged to full duty. It appears that the diagnosis of a more severe mental disorder was not made at that time in part because you did not disclose your prior mental health history. On 16 October 1990, a Navy psychologist recommended that you be disqualified from further duty in the nuclear power field because of unreliability. A medical record entry dated 14 January 1991 (not 14 January 1990 as indicated by Dr. Gersh in his statement of 1 May 1995) indicates that a civilian family counselor, presumably Ms. Cross, reportedly recommended that you receive individual therapy for obsessive-compulsive disorder. Unfortunately, the records supporting the civilian provider's diagnosis of that disorder were not made available for the Board's review. It is notable that Ms. [REDACTED] who first treated you on 20 December 1990, did not diagnose a depressive disorder or refer you to a psychiatrist for consideration of medication until 16 months later, after you had deserted the Navy. You were evaluated by a Navy psychologist on 28 January 1991, and once again concealed your psychiatric history. Although you disclosed then current complaints of feeling sad, as well as daydreaming too often, sleeping too much, and playing mindless computer games, you denied symptoms of major depression. Your complaints centered on your resentment over things that had happened to you during the past year, such as your inability to qualify for a commissioning program, being "de-nuked" for problems with the pace of submarine duty, which at that time you denied you had experienced, and the recoupment of your reenlistment bonus. You also reported significant marital problems related to an extra-marital affair. You denied a history of traumatic events during your childhood, such as the aforementioned sexual abuse of your step-mother, as well as the psychiatric hospitalization in 1980, and psychiatric counseling in the mid-1980's. Your mood was described as sad at times, and frustrated and angry at other times. There was no evidence of organicity, or of thought or perceptual disturbances at that time. It was noted again that you had been diagnosed by a civilian provider with an obsessive-compulsive personality disorder, and it was felt that you had a history of

narcissism and strong sense of self-entitlement. You were given diagnoses of Marital Problem, Occupational Problem, and Narcissistic and Obsessive-compulsive traits. Based on the information you disclosed, you were considered psychologically fit for duty, and were referred to a stress management class. As long-term individual therapy for your marital, occupational and dysfunctional personality traits was not available at that time through the Navy, you were advised to continue in marital therapy, and seek psychological follow-up as needed.

In view of your disqualification from duty aboard submarines, you were assigned to duty with the Commander, Submarine Group Six (COMSUBRON 6), pier crew, with responsibility for maintaining the pier's appearance and setting-up berths. You were assigned to a submarine tender during the 14 May 1991-31 March 1992 period, but as you were considered unsuitable for deployment, you returned to COMSUBRON 6 for temporary duty during the 18 July 1991-6 January 1992 period, when the submarine tender was deployed to the Persian Gulf. In a letter dated 15 January 1992, you advised the commanding officer of the submarine tender that you had been told that although you had done nothing wrong, there were certain entries in your record which would preclude you from attaining your goal of becoming a commissioned officer, and that there were no other fields "that were as financially rewarding as the Naval Nuclear Power Program." As there was no available field in the Navy which interested you, and in view of the downsizing of the Navy, you requested that you be administratively separated. In a letter dated 16 January 1992, you complained that you had been punished for attempting to get help "...in the proper, non-destructive way." You stated that "...I have found that there is no regard for taking a person's career away. It is the circumstances behind my disqualification and my subsequent efforts to be re-instated that have left me with a very negative attitude towards future service in the Navy. I have no motivation to excel or do my best. I have simply been reduced to attempting to remain out of trouble." On 1 April 1992, after being advised of the denial of your request for discharge, you deserted. The Board concluded that it was at least as likely as not that you deserted because of anger, petulance and/or a sense of frustrated entitlement, rather than because you suffered from clinical depression. In any event, you have not demonstrated, and there is no credible evidence which establishes, that you lacked mental responsibility when you deserted or upon your return.

The Board concluded that the explanation contained in the letter advising you of the initial denial of your application adequately discusses the reasoning underlying its conclusion with regard to the issue of lack of mental responsibility for the crime resulting in your discharge under other than honorable conditions. It noted that the authors of the advisory opinion had indicated, albeit in an inartful manner, that you did not lack mental responsibility when you committed the offense resulting in your discharge. Rule for Court-Martial 916(k)(1) outlines the defense of lack of mental responsibility under the Uniform Code of Military Justice. That rule provides that it is an affirmative defense to any offense that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his or her acts. Mental disease or defect does not otherwise constitute a defense. Subparagraph

(k)(2) provides that a mental condition not amounting to a lack of mental responsibility under subsection (k)(1) is not a defense, nor is evidence of such a mental condition admissible as to whether the accused entertained a state of mind necessary to be proven as an element of the offense. As indicated in the advisory opinion, "[t]here was no evidence that Major Depressive Disorder represented a severe mental disease or defect." That finding corresponds with a finding made by a Navy psychologist who examined you during May 1992, following the termination of your desertion. The Board noted that if you did not suffer from a severe disease or defect, you did not, by definition, lack mental responsibility. In addition, it noted that there is no suggestion in the available records, with the possible exception of Mr. Blankenburg's statement, that you were unable to appreciate the nature, quality, or wrongfulness of your actions.

The panel of the Board which considered the application on 9 May 1996, as well as the current panel, concurred with only so much of the advisory opinion as pertained to the issue of mental responsibility. It rejected the implication that relief was warranted because your judgment had been adversely affected by your mental disorder. Although that factor may be considered as a matter in extenuation of mitigation of your crime, it is irrelevant to the issue of your guilt or innocence. Each panel of the Board concluded that your misconduct was not **significantly** mitigated or extenuated by your alleged mental disorder or the effects thereof, i.e., to the extent that your criminal conduct should be excused, and that a discharge by reason of physical disability should substituted for administrative discharge processing. The Board did not consider its finding in that regard to be a medical judgment, or the improper substitution of its judgment for that of the authors of the advisory opinion. The Board again noted that your former commanding officer granted you substantial clemency by not referring the charges for trial by court-martial.

The Board rejected the psychiatric advisors' comments to the effect that your judgment was adversely affected by your depressed mood, and that your behavior was not characteristic of you "as indicated by his above average evaluations and lack of legal or disciplinary problems during his five year enlistment." As noted previously, the nature of the mental disorder(s) from which you suffered during your enlistment cannot be accurately determined in view of your repeated lies about your mental health history. Was your judgment adversely affected by depressive symptoms, or were you merely acting-out because your plans had been frustrated, and attempting to use psychological complaints to your advantage? The Board believed the latter explanation is more likely than the former. The Board felt that the behavior resulting in your discharge was characteristic of you, in that you had previously acted-out when faced with arduous duty and frustrated plans. You absented yourself without authority briefly in October 1990 because you didn't want to deploy with your submarine, and then sought psychiatric care in an effort to excuse your actions. You deserted the Navy when notified that your request for administrative discharge had been denied, and sought psychiatric care from Navy practitioners following the termination of your desertion, in another apparent attempt to excuse misconduct because it was related to an alleged mental disorder. During your testimony before your administrative discharge board, you tried to explain your desertion by stating that you were too depressed to get out of bed and go to

work. On cross-examination, however, you acknowledged that you had a civilian job during a portion of the time you were in a desertion status, and that you were too depressed to get up to go work in the Navy, but not too depressed to work the private sector. A statement to the effect that all you wanted from the Navy was to receive nuclear training and then obtain a medical discharge was presented at your administrative discharge hearing. The statement also indicated that you had absented yourself without authority to avoid a deployment, and then had you wife check you into a hospital, and that you had sought a "medical letter" after your later, extended absence. You did not rebut that information during testimony at the hearing.

The Board concluded that, for the most part, your performance evaluations were mediocre, rather than above average, and particularly so for a person who had been trained for duty in the nuclear field. During your first enlistment, you received numerous marks below 4.0, and during your second, you received adverse comments and many marks in the 2.8 to 3.0 range. Many of your evaluations were marginal, at best, in the context of the inflated rating system which prevailed at that time.

The Board was somewhat perplexed by the seemingly contradictory findings of the Court that "the record is clear that the plaintiff will not be entitled to an honorable discharge" as misconduct such as you committed normally warrants a discharge under other than honorable conditions, and its finding that you may be entitled to a medical discharge because "if the plaintiff was not responsible for his conduct, he could not commit the misconduct which lead [sic] to his discharge". The Board noted that a discharge by reason of misconduct and a discharge by reason of physical disability are mutually exclusive. If a service member is discharged for misconduct, and regardless of whether the member's service is characterized as honorable, under honorable conditions, or under other than honorable conditions, the member cannot receive disability benefits administered by the Department of the Navy. If a service member is discharged by reason of physical disability, and is not in entry level status, the member must receive an honorable or general characterization of service, as warranted by the service record. A discharge under other than honorable conditions is not authorized.

The Board agreed with the Court's finding that you are not entitled to an honorable discharge because of the nature of your misconduct. It disagreed with the Court's finding that reference to " ...the Disability Evaluation System SECNAVINST 2072 [sic]" was "the Board's attempt to dismiss the possibility of a medical discharge." The Board noted that had you been referred to the Disability Evaluation System (DES) prior to your desertion, disability processing would have been terminated in accordance SECNAVINST 1850.4C, 8 March 1990, paragraph 2073, rather than suspended in accordance with paragraph 2072 as the Court was apparently advised during the course of the litigation of this matter. The former paragraph provides that when a member who is being evaluated within the DES is administratively declared a deserter (as you were) the disability evaluation shall be terminated, and that no further action shall be taken until appropriate disciplinary or administrative action had been completed, the member has been reexamined, and a current medical board prepared. As you had not been evaluated by a medical board or referred for

disability evaluation prior to your desertion, neither of the cited sections of SECNAVINST 1850.4C was applicable to the particular facts of your case. More pertinent guidance is contained in the Navy Military Personnel Manual, (MILPERSMAN) paragraph 3640474.5, then in effect, as follows:

"Members who have received an administrative discharge under MILPERSMAN 3630100 through 3630900 or a punitive discharge shall not be afforded medical board action as these discharges take precedence over medical disability separations or limited duty considerations. In such instances, completion of the SF 88, Report of Medical Examination, or SF 93, Report of Medical History, with physical defects noted, shall be filled out and made a permanent part of the member's health record. The member may then be separated."

As a medical board is the first step in the disability evaluation process, the foregoing provision would have precluded your referral to the DES because you were processed for discharge for misconduct pursuant to MILPERSMAN 3630600. You were accorded a pre-separation physical examination on 4 August 1992, and SFs 88 and 93, as required by the MILPERSMAN. Interestingly, you stated that you were in good health at that time. The physician who performed the examination noted that you had dysthymia with narcissistic and avoidant traits, but found you physically qualified for separation.

The Board noted that the finding that you were qualified for discharge does not vitiate the Board's finding that you would not have been found physically qualified for enlistment had you made full disclosure of your mental health history prior to enlisting, as the physical standards for retention in and/or separation from the Navy are much less stringent than procurement physical standards. For example, a person with a history major depression would be ineligible for enlistment, whereas one who developed major depression while on active duty would not be considered unfit per se, and, in many cases, would be allowed to remain on active duty.

With regard to the issue of possible service aggravation of your pre-existing mental disorder, the Board noted that in the context of military disability evaluations, the terms "exacerbation" and "aggravation" are not synonymous, and in fact have quite different uses and meanings. The former term is generally reserved for acute flare-ups of pre-existing conditions, whereas the latter is applied when there is a permanent worsening of a condition beyond the expected, normal progression of the underlying disease process. None of the medical experts who have examined you, either civilian or naval, specifically addressed the issue of service aggravation in your case. The Board concluded that although there may have been acute exacerbations of a pre-existing mental disorder or disorders during your enlistment, you have not demonstrated that those flare-ups were related to a depressive disorder rather than your dysfunctional personality traits such as narcissism, or your heightened sense of self-entitlement. The Board concluded that the fact that you were confined for psychiatric treatment in 1980, and received psychiatric counseling in the mid-1980's, strongly militate against a conclusion that you had a depressive disorder which was permanently aggravated beyond natural progression by your naval service. Even if it were to be assumed, for the

sake of argument, that there was permanent aggravation of a depressive disorder incident to your service, equity would not demand that your request for correction of your record be granted, in view of your fraudulent enlistment and resulting failure to provide significant service in the field in which you were trained at great expense, your avoidance of hazardous service during a time of armed conflict, and your desertion and administrative discharge by reason of misconduct. If the Board were to grant your request, you would be unjustly enriched not only by that action, but also because such action would undoubtedly result in your receiving substantial, life-long disability payments from the Department of Veterans Affairs for a condition which existed prior to your enlistment.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. Please be advised that in the event you request further consideration, or further consideration is directed, it may, in accordance with the Procedures of the Board for Correction of Naval Records, codified at 32 Code of Federal Regulations 723 and following, paragraph 6(a)(2), it may require you to present additional information it may consider essential to a complete and impartial determination of the facts, such as your complete pre-service medical record, and the notes and records of evaluation and treatment provided by your expert witnesses.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

DEPARTMENT OF PSYCHIATRY
NAVAL MEDICAL CENTER
PORTSMOUTH, VIRGINIA 23708-2197

6520
0506:6-0379
24 APR 96

From: Case Reviewer, Forensic Division, Department of Psychiatry,
Naval Medical Center, Portsmouth, Virginia 23708-2197
To: Board of Corrections of Naval Records, Department of the
Navy, Washington, DC 20370-5100

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO [REDACTED]
[REDACTED]

Ref: (a) Your letter dated 26 Feb 96

Encl: (1) BCNR File
(2) Service Record

1. Reference (a) requested a psychiatry specialty review of the petitioner's request. We have reviewed the enclosures and note the following facts:

a. Review of the member's records outlines a history of symptoms consistent with Dysthymic Disorder since adolescence.

b. Review of the member's records additionally documents symptoms consistent with a Major Depressive Episode in April 1992, for which the member received pharmacotherapy and psychotherapy from a civilian provider during the time he was in an unauthorized absence status.

c. Subject member was discharged with an undesirable discharge after returning to his command from a six week unauthorized absence. When notified of separation processing, he waived his right to consult with council to have his case reviewed by an administrative board.

2. We offer the following opinions:

a. The presence of Major Depressive Disorder at the time of the member's misconduct does not excuse his misconduct. There was no evidence that Major Depressive Disorder represented a severe mental disease or defect. It is our opinion, however, that this member's judgment at the time of the misconduct was adversely affected by his depressed mood. The member's behavior at the time of the misconduct was not characteristic of him, as indicated by his above average evaluations and lack of legal or disciplinary problems during his five year enlistment.

SUBJ: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO [REDACTED]
[REDACTED]

b. The member's records indicate that his depressive symptoms were partly exacerbated by occupational distress. His depressive symptoms likely rendered him unable to perform his duties in a satisfactory manner.

3. In summary, we argue in favor of the member's request for correction of his Naval Medical Record.

M. Horvath
M. HORVATH (P)
LT MC USNR

C. L. Coleman
C. L. COLEMAN (P)
CDR MC USN